

## MEMORANDUM

**DATE:** August 11, 2010  
**TO:** The Chesapeake Bay Board  
**FROM:** Michael D. Woolson, Senior Watershed Planner  
**SUBJECT:** CBV-10-009 – Mr. William G. Casto, 142 Riverview Plantation Drive

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Mr. William G. Casto has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated June 25, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of two retaining walls.

On June 10, 2010, staff became aware of the unauthorized retaining walls following a mitigation inspection at the residence. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff has met with the Owner regarding this issue after issuing the Notice of Violation on June 25.

### Historical Background Information

On or about May 26, 2009 an Application for Building Permit was submitted for the building of a new single family residence. This lot (PIN 1640600001) has an RPA encroaching upon it because of the 2004 Chesapeake Bay Preservation Ordinance amendments from the lake (Lake Norvel). At the time of the original Building Permit application, it was noted that the retaining walls shown on the plan were to receive approval from the Chesapeake Bay Board prior to building them. The exception request that was granted for the building of this residence expressly stated that the approval did not include the retaining walls.

On or about February 11, 2010, an additional Application for Building Permit was applied for, requesting the building of the two retaining walls shown on the original application. Staff noted there was no erosion and sediment control required for these structures. No request was made at that time for a Chesapeake Bay Board exception and the walls were built.

Board members have communicated to staff their general resistance to processing after-the-fact permits.

### Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. William Casto is the current property owner and he had prior knowledge that a Chesapeake Bay Preservation Area was designated on the property through his original building permit application.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity; and
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Riverview Plantation that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, once the proposed planting plan is implemented or possibly expanded upon.
3. The hardship is self-inflicted, as the owner was told, in writing, that he had to go through the Chesapeake Bay Board for approval of the retaining walls.

Should this Board find in favor of staff, the Board should deny the appeal and allow the administrative order to remain in place.

Should the Board find in favor of the appellant, the Board should require that the retaining wall application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

#### Attachments

1. Notice of Violation, dated June 25, 2010
2. Appeal letter, dated July 2, 2010
3. CBPO Sensitive Area Application Form, dated May 21, 2009
4. Original SFD approval, dated May 26, 2009
5. Building Permit application, dated Feb 11, 2010
6. Photographs